

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO. 5:07-cr-00017-01

LARRY BLEVINS,

Defendant.

MEMORANDUM OPINION AND JUDGMENT ORDER

Pending before the Court is a motion, brought pursuant to 18 U.S.C. § 3582(c)(2), to reduce Defendant's sentence based on a subsequent reduction in the applicable sentencing guideline. On November 1, 2007, the United States Sentencing Guidelines were amended to reduce by two levels the guidelines in Section 2D1.1 for cocaine base (also known as crack). Subsequently, the Sentencing Commission amended Section 1B1.10 to make the crack amendment retroactive, effective March 3, 2008. Pursuant to a Standing Order entered on February 6, 2008, this case was designated for Standard consideration.

The Court has received and considered the addendum to the PSI from the Probation Office, and received any materials submitted by the parties on this issue.

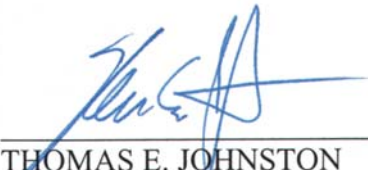
The original PSI for the Defendant indicated a base offense level of 34, an adjusted offense level of 32, for a total offense level of 29. After the preparation of the PSI but before the Defendant's sentencing, the November 1, 2007, the amended crack sentencing guidelines went into effect. Therefore, an Addendum to the PSI was submitted, which incorporated the changes in the

guideline calculation brought about by the crack amendment. Thus, at the time of sentencing, the Defendant's base offense level was 32, with an adjusted offense level of 30, for a total offense level of 27. Therefore, the Defendant is not eligible for an additional sentence reduction because the application of the amended crack guidelines at the time of the Defendant's sentencing already resulted in a 2 level reduction of the base offense level. Therefore, Defendant has already received the benefit of the crack amendment. Accordingly, the § 3582 Motion is **DENIED**. Further, the Defendant's *Motion to Dismiss Counsel and Strike Counsel Memorandum Motion to Consider Defendant Pro Se Motion Filed on October 15, 2008* [Docket 159] is **DENIED AS MOOT**.

IT IS SO ORDERED

The Court **DIRECTS** the Clerk to send a copy of this Order to the Defendant and counsel, the United States Attorney, the United States Probation Office, and the United States Marshal.

ENTER: January 7, 2010



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE